

## **AMENDMENTS TO THE DRAWINGS**

Please replace drawing sheet 3 with the attached amended drawing sheet. The drawing has been amended to correct informalities noted by the examiner.

## REMARKS

### STATUS OF THE CLAIMS

Claims 1-12 were pending in this application. Claim 12 is being cancelled without prejudice.

In an Official Action mailed January 10, 2007, the Examiner rejected claims 1-12. Claims 1-7 and 9-12 were rejected under 35 U.S.C. §112 for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention. Claims 1-5 and 8 were rejected under 35 U.S.C. §102(b) as being anticipated by GB 2 329 127 A to Heaton et al. (hereinafter Heaton). Claims 6-7 and 9-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Heaton '127 in view of WO 90/11795 to Zamierowski (hereinafter Zamierowski).

### ANALYSIS

#### *Objections*

The Examiner has objected to Fig. 3. Amended Fig. 3 is included with this paper. It is believed that amended Fig. 3 resolves the objection of the Examiner.

The Examiner has objected to the Description. The Description has been reviewed and amendments to the Description are included with this Amendment. It is believed that the amended Description resolves the objection of the Examiner.

The Examiner has objected to the Applicants' use of the term non-porous in the claims. As explained by the Examiner, "pore" is defined as 'a minute orifice' or 'minute surface opening or passageway'." (Official action mailed 1/10/2007, pg. 3, l. 19) The term "minute" as used in this context is defined as "very small: INFINITESIMAL." *Merriam-Webster's Collegiate Dictionary* 740 (10<sup>th</sup> ed. 2002). Thus, a pore is a very small or infinitesimally small orifice, surface opening, or passageway. Claims 6-7 and 9-12 recite a "generally non-porous material." By this recitation, the material does not have very small or infinitesimally small orifices, surface openings, or passageways.

While the structure recited in the claims includes holes and openings, the recited holes and openings are formed in a generally non-porous material. In short, the holes and openings are formed in a material which generally does not include very small or infinitesimally small orifices, surface openings, or passageways. One skilled in the art would understand that discrete holes or openings formed in a "generally non-porous material" do not transform the material to a porous structure. Therefore, the Examiner's objection to the use of "non-porous" is improper and should be withdrawn.

### *Rejections*

#### 35 U.S.C. §112

The Examiner rejected claims 1-7 and 9-12 for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention. It is believed that the accompanying amendments to the claims and specification as well as the discussion with regard to the objections above resolve any deficiencies under 35 U.S.C. §112.

#### 35 U.S.C. §102(b)

The Examiner rejected claims 1-5 and 8 as being anticipated by Heaton. Amended claim 1 recites a “wherein the member is formed from a material that is generally non-porous, generally non-foam-like, and generally non-absorptive.” The bottom surface in Heaton is a surface of a piece of open-celled foam 73. (Heaton, pg. 8, line 2 of the second paragraph) The recitation of amended claim 1 is distinguishable over the open-celled foam disclosed by Heaton. As such, claim 1 is allowable over Heaton. Claims 2-7 each depend from claim 1 and are allowable on at least this basis.

As amended, claim 8 recites a “an outer peripheral portion of the wound contacting layer configured to communicate with an undermined portion of the wound, wherein the wound contacting layer is formed from a material that is generally non-porous, generally non-foam-like, and generally non-absorptive.” As discussed above, the bottom surface in Heaton is a surface of a piece of open-celled foam 73. (Heaton, pg. 8, line 2 of the second paragraph) The recitation of amend claim 8 is distinguishable over the open-celled foam disclosed by Heaton. As such, amended claim 8 is allowable over Heaton.

#### 35 U.S.C. §103(a)

The Examiner rejected claims 6-7 and 9-11 as unpatentable over Heaton in view of Zamierowski. As amended, claim 6 recites “wherein the at least one discrete opening is positioned to engage an undermined portion of the wound.” Both Heaton and Zamierowski fail to disclose a structure having “at least one discrete opening positioned to engage an undermined portion of the wound.” Claim 6 is distinguishable over the combination of Heaton and Zamierowski on at least this basis. Claim 6 as amended is in condition for allowance. Claim 7 depends from claim 6 and is allowable on at least this basis.

Claim 9 recites “a second plurality of discrete holes adapted to communicate negative pressure to an undermined portion of the wound.” Both Heaton and Zamierowski fail to

disclose "discrete holes adapted to communicate negative pressure to an undermined portion of the wound" as recited in claim 9. The rejection of claim 9 is improper on at least this basis and should be withdrawn. Claims 10-12 depend from claim 9 and are allowable on at least this basis.

#### CONCLUSION


In light of the forgoing, it is believed that pending claims 1-11 are in condition for allowance. Such action is respectfully requested.

If the Examiner believes that a telephonic interview would expedite the allowance of this application, she is requested to contact the undersigned for a prompt resolution of any outstanding issues.

It is believed that there are no fees due with the filing of this amendment. However, it is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response, and shortages and other fees be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435, with reference to file 7175-71858.

Respectfully submitted,

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